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## DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-839]

Certain Polyester Staple Fiber from the Republic of Korea: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) and preliminarily determining that Toray Advanced Materials Korea, Inc. (TAK) is the successor-in-interest to Toray Chemical Korea, Inc. (TCK) for the purposes of the antidumping duty (AD) order certain polyester staple fiber (PSF) from the Republic of Korea (Korea).

DATES: Applicable [Insert date of publication in the *Federal Register*.]

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-1395.

### SUPPLEMENTARY INFORMATION:

#### Background

On May 25, 2000, Commerce published the AD orders on PSF from Korea and Taiwan.<sup>1</sup> On December 22, 2014, Commerce determined that Toray Chemical Korea was the successor-in-interest to Woongjin Chemical Company, Ltd. (Woongjin) and thus was entitled to make entries

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<sup>1</sup> See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan, 65 FR 33807 (May 25, 2000) (AD Order).

of subject merchandise at the cash deposit rate assigned to Woongjin, 2.13 percent *ad valorem*.<sup>2</sup> On May 23, 2019, TAK requested that, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b), Commerce conduct a CCR of the *AD Order* to determine that TAK is the successor-in-interest to TCK and, accordingly, to assign it the cash deposit rate established for TCK.<sup>3</sup> In its submission, TAK explained that TCK, a wholly-owned subsidiary of TAK, merged with TAK in April 2019. TAK provided source documentation to demonstrate that the management responsible for PSF production remains largely in place after the merger, and TCK's production facilities, suppliers, and customers for PSF are unchanged.<sup>4</sup> TAK further requested that Commerce combine the notice of initiation and preliminary results pursuant to 19 CFR 351.221(c)(3)(ii).<sup>5</sup> We did not receive comments from other interested parties concerning this request.

#### Scope of the *AD Order*

The merchandise subject to this order is certain polyester staple fiber (PSF). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these orders may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) at subheading

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<sup>2</sup> See *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of Changed Circumstances Review*, 79 FR 76301 (December 22, 2014).

<sup>3</sup> See TAK letter, "Certain Polyester Staple Fiber from the Republic of Korea: Changed Circumstances Review Request," May 23, 2019 (CCR Request).

<sup>4</sup> *Id.* at 1-4.

<sup>5</sup> *Id.* at 2.

5503.20.00.25 is specifically excluded from these orders. Also, specifically excluded from these orders are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from these orders. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to these orders is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65.<sup>6</sup> Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the orders is dispositive.

#### Initiation and Preliminary Results

Pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of a request from an interested party for a review of an AD order which shows changed circumstances sufficient to warrant a review of the order. In the past, Commerce has used CCRs to address the applicability of cash deposit rates after there have been changes in the name or structure of a respondent, such as a merger or spinoff (“successor-in-interest” or “successorship” determinations).<sup>7</sup> The information submitted by TAK supporting its claim that it is the successor-in-interest to TCK demonstrates changed circumstances sufficient to warrant such a review.<sup>8</sup> Therefore, in accordance with 751(b)(1)(A) of the Act and 19 CFR 351.216(d) and (e), we are initiating a CCR based on the information contained in TAK’s submission.

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<sup>6</sup> These HTSUS numbers have been revised to reflect changes in the HTSUS numbers at the suffix level.

<sup>7</sup> See, e.g., *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 82 FR 51605, 51606 (November 7, 2017) (*Diamond Sawblades Preliminary*), unchanged in *Diamond Sawblades and Parts Thereof from the People’s Republic of China: Final Results of Antidumping Duty Changed Circumstances Review*, 82 FR 60177 (December 19, 2017) (*Diamond Sawblades Final*).

<sup>8</sup> See 19 CFR 351.216(d).

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.<sup>9</sup> In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and we have combined the notice of initiation and the notice of preliminary results.<sup>10</sup>

In this CCR, pursuant to section 751(b) of the Act, Commerce conducted a successor-in-interest analysis. In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.<sup>11</sup> While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally, Commerce will consider the new company to be the successor to the previous company if the new company's operation is not materially dissimilar to that of its predecessor.<sup>12</sup> Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as essentially the same business entity as the predecessor company, Commerce may assign the new company the cash deposit rate of its predecessor.<sup>13</sup>

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<sup>9</sup> See 19 CFR 351.221(c)(3)(ii); see also *Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 80 FR 33480, 33480-41 (June 12, 2015) (*Pasta from Italy Preliminary Results*), unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review*, 80 FR 48807 (August 14, 2015) (*Pasta from Italy Final Results*).

<sup>10</sup> See, e.g., *Pasta from Italy Preliminary Results*, 80 FR at 33480-41, unchanged in *Pasta from Italy Final Results*, 80 FR at 48807.

<sup>11</sup> See, e.g., *Diamond Sawblades Final I*, *supra* note 6; see also *Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 83 FR 37784 (August 2, 2018), unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 83 FR 49909 (October 3, 2018).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*; see also, e.g., *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India*, 77 FR 64953 (October 24, 2012), unchanged in *Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India*, 77 FR 73619 (December 11, 2012).

Based on the evidence on the record, we preliminarily determine that TAK is the successor-in-interest to TCK. In its request, TAK provided evidence to support its contention that it meets the criteria established by Commerce, and therefore, is the successor-in-interest of TCK pursuant to section 751(b) of the Act. First, TAK provided documentation indicating that the structure and management of the PSF operations under TAK are nearly identical the PSF structure and operations that existed under TCK prior to the merger of TCK into TAK, its parent company. Specifically, TAK provided organizational charts,<sup>14</sup> lists of managers,<sup>15</sup> and board of directors<sup>16</sup> supporting TAK's claim that the management remained the same after the merger. A review of these documents shows that: (1) TAK's organization of its PSF operations is virtually identical to the structure of the PSF operations under TCK; (2) the managers currently in charge of PSF operations at TAK are the same individuals who were in charge of PSF operations at TCK; and (3) the vast majority of TAK's current executives and board of directors held similar positions on TAK and/or TCK prior to the merger. TAK also notes that the individual who managed the PSF division in TCK continues to manage the PSF division within TAK.<sup>17</sup>

Next, TAK provided information to support its claim that its PSF operations are the same as TCK's before the merger. Specifically, it provided a layout of the production facilities before and after the merger, the production process before and after the merger, and the production capacity for the factory before and after the merger.<sup>18</sup> A review of these documents shows (1) the area within the plant in which PSF was produced by TCK prior to the merger has not changed under TAK; (2) the production process of PSF remains the same since the merger; and, (3) the total PSF production capacity has remained unchanged.

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<sup>14</sup> See CCR Request at Exhibits 6-A, 6-B, and 6-C.

<sup>15</sup> *Id.* at Exhibit 7.

<sup>16</sup> *Id.* at Exhibit 8.

<sup>17</sup> *Id.* at 7.

<sup>18</sup> *Id.* at Exhibit 9.

With regard to the supplier relationships and customer base involving the production and sales of PSF, TAK reports that these have remain unchanged since the merger with TCK. TAK adds that because the merger was only recently completed (in April 2019), the company has had limited time to purchase goods and services from all of its suppliers or to make sales to all of its customers.<sup>19</sup> However, it provides support demonstrating that it plans to continue to use the same practices as TCK did prior to the merger. First, to demonstrate its claim regarding its supplier relationship, TAK provided a master list of its suppliers of materials and service providers related to the production of PSF for itself and for TCK prior to the merger; these lists are were identical.<sup>20</sup> Similarly, TAK provided its current master PSF customer list, which is identical to TCK's customer list before the merger, to demonstrate that its customer base has remained unchanged post-merger.<sup>21</sup> Further, TAK explains that it markets PSF products to its customers in the same way, relying on the same sales personnel and the same, unchanged PSF product brochures published by TCK previous to the merger.<sup>22</sup> Finally, TAK notes that the supplier and customer codes used in TCK's accounting system continue to be used by TAK.<sup>23</sup>

Based on the evidence on the record discussed above, we preliminarily determine that TAK is the successor-in-interest to TCK, because the change in the business' structure (the merger of the wholly owned subsidiary into the parent company) was not accompanied by significant changes to its management and operations, production facilities, supplier relationships, or customer base. Thus, we preliminarily determine that TAK is the successor-in-interest to TCK, and that TAK should receive the same antidumping duty cash deposit rate with respect to subject merchandise.

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<sup>19</sup> *Id.* at 8.

<sup>20</sup> *Id.* at Exhibit 11.

<sup>21</sup> *Id.* at Exhibit 12.

<sup>22</sup> *Id.* at Exhibit 10.

<sup>23</sup> *Id.* at Exhibits 11 and 12.

## Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice. In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>24</sup> All comments are to be filed electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), available to registered users at <https://access.trade.gov> and in the Central Records Unit, Room B8024, of the main Commerce building. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day it is due.<sup>25</sup>

Consistent with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days of the publication of these preliminary results if all parties agree to our preliminary finding.

## Notification to Interested Parties

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216(b), 351.221(b) and 351.221(c)(3).

Dated: July 8, 2019.  
Jeffrey I. Kessler,  
Assistant Secretary  
for Enforcement and Compliance.

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<sup>24</sup> See 19 CFR 351.309(c)(2).

<sup>25</sup> See 19 CFR 351.303(b).

